

EXHIBIT B

In the Matter Of:
STATE OF ILLINOIS

VS

HITACHI LTD.

COURT PROCEEDINGS

May 11, 2016



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1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2 COUNTY DEPARTMENT, CHANCERY DIVISION

3 THE STATE OF ILLINOIS, by)
4 its Attorney General, Lisa)
5 Madigan,)
6)
7 Plaintiff,)
8) 12 CH 35266
9)
10 -vs-)
11)
12 HITACHI LTD., et al.,)
13)
14 Defendants.)
15)
16 _____

17 REPORT OF PROCEEDINGS of the above-entitled
18 cause before the Honorable RITA M. NOVAK, Judge of
19 said Court, on May 11, 2016, at the hour of 10:30
20 o'clock a.m.

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<p>1 A P P E A R A N C E S :</p> <p>2 OFFICE OF THE ATTORNEY GENERAL</p> <p>3 BY: MR. CHADWICK O. BROOKER</p> <p>4 and MR. BLAKE HARROP</p> <p>5 100 West Randolph Street</p> <p>6 12th Floor</p> <p>7 Chicago, IL 60601</p> <p>8 (312) 814-1004</p> <p>9 cbrooker@atg.state.il.us</p> <p>10 bharrop@atg.state.il.us</p> <p>11 On behalf of the Plaintiff;</p> <p>12 KIRKLAND & ELLIS</p> <p>13 BY: MR. KARL STAMPFL</p> <p>14 and MS. AMANDA JACOBOWSKI</p> <p>15 300 North LaSalle Street</p> <p>16 Chicago, IL 60654</p> <p>17 (312) 862-2000</p> <p>18 karl.stampfl@kirkland.com</p> <p>19 amanda.jacobowski@kirkland.com</p> <p>20 On behalf of the Defendants,</p> <p>21 Hitachi, Ltd., Hitachi Displays, Ltd.</p> <p>22 (n/k/a Japan Display East, Inc.), and</p> <p>23 Hitachi Electronic Devices (USA), Inc.;</p> <p>24 ROTHSCCHILD, BARRY & MYERS</p> <p>BY: MR. DANIEL A. CUMMINGS, III</p> <p>150 South Wacker Drive</p> <p>Suite 3025</p> <p>Chicago, IL 60606</p> <p>(312) 372-2345</p> <p>cummings@rbmchicago.com</p> <p>On behalf of the Defendants,</p> <p>Toshiba Corporation, Toshiba America,</p> <p>Inc., Toshiba America Electronic</p> <p>Components, Inc., and Toshiba America</p> <p>Information Systems, Inc.;</p>	<p>1 APPEARANCES (Continued):</p> <p>2 FREEBORN & PETERS</p> <p>3 BY: MR. JEFFERY M. CROSS</p> <p>4 311 South Wacker Drive</p> <p>5 Suite 3000</p> <p>6 Chicago, IL 60606</p> <p>7 (312) 360-6000</p> <p>8 jcross@freeborn.com</p> <p>9 On behalf of the Defendants,</p> <p>10 Koninklijke Philips Electronics N.V.,</p> <p>11 Philips Electronics North America</p> <p>12 Corporation, and Philips Electronics</p> <p>13 Industries Taiwan, Ltd.;</p> <p>14 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP</p> <p>15 BY: MS. MIKELA T. SUTRINA</p> <p>16 70 West Madison Street</p> <p>17 48th Floor</p> <p>18 Chicago, IL 60602</p> <p>19 (312) 499-6300</p> <p>20 msutrina@sheppardmullin.com</p> <p>21 On behalf of the Defendants,</p> <p>22 Samsung electronics Co., Ltd.,</p> <p>23 Samsung Electronics America, Inc.,</p> <p>24 Samsung Display Device Co., Ltd. and</p> <p>Samsung SDI America, Inc.;</p> <p>WINSTON & STRAWN LLP</p> <p>BY: MR. JAMES HERBISON</p> <p>and MR. KEVIN F. WOLFF</p> <p>35 West Wacker Drive</p> <p>Chicago, IL 60601</p> <p>(312) 558-5600</p> <p>jherbison@winston.com</p> <p>kwolff@winston.com</p> <p>On behalf of the Defendants,</p> <p>Panasonic Corporation, Panasonic</p> <p>Corporation of North America, and</p> <p>MT Picture Display Co., Ltd.;</p>
Page 4	Page 5
<p>1 APPEARANCES (Continued):</p> <p>2 MUNGER, TOLLES & OLSON LLP</p> <p>3 BY: MS. MIRIAM KIM</p> <p>4 560 Mission Street</p> <p>5 27th Floor</p> <p>6 San Francisco, CA 94105-2907</p> <p>7 (415) 512 4041</p> <p>8 Miriam.Kim@mto.com</p> <p>9 and</p> <p>10 EIMER STAHL LLP</p> <p>11 BY: MR. DAVID M. SIMON</p> <p>12 224 South Michigan Avenue</p> <p>13 Suite 1100</p> <p>14 Chicago, IL 60604</p> <p>15 (312) 660-7676</p> <p>16 dsimon@eimerstahl.com</p> <p>17 On behalf of the Defendants,</p> <p>18 LG Electronics, Inc., and LG</p> <p>19 Electronics USA.</p> <p>20 *</p> <p>21 *</p> <p>22 *</p> <p>23 *</p> <p>24 *</p>	<p>1 (Whereupon, the following</p> <p>2 proceedings were had in</p> <p>3 open court.)</p> <p>4 THE COURT: 12 CH 35266, State of</p> <p>5 Illinois versus Hitachi.</p> <p>6 Good morning, everyone.</p> <p>7 MR. HARROP: Good morning, your</p> <p>8 Honor.</p> <p>9 MR. CROSS: Good morning, your Honor.</p> <p>10 MR. BROOKER: Chad Brooker on behalf</p> <p>11 of the State.</p> <p>12 MR. HARROP: Blake Harrop on behalf</p> <p>13 of the State.</p> <p>14 MR. CROSS: Jeffery Cross on behalf</p> <p>15 of Koninklijke Philips N.V. and Philips</p> <p>16 Electronics Corporation.</p> <p>17 MR. CUMMINGS: Dan Cummings for the</p> <p>18 Toshiba Defendants.</p> <p>19 MR. STAMPFL: Karl Stampfl and Amanda</p> <p>20 Jacobowski for the Hitachi Defendants.</p> <p>21 MS. KIM: Miriam Kim for LG</p> <p>22 Electronics and LG USA.</p> <p>23 MR. SIMON: David Simon also for the</p> <p>24 LG Defendants.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. HERBISON: Jim Herbison and Kevin</p> <p>2 Wolff for the Panasonic Defendants.</p> <p>3 MS. SUTRINA: Mikela Sutrina on</p> <p>4 behalf of Samsung Defendants.</p> <p>5 THE COURT: Good morning, all. I</p> <p>6 have a motion by the Plaintiff, the People, to</p> <p>7 compel the Defendants to produce documents that</p> <p>8 were filed under seal in the MDL case. And so</p> <p>9 I've had a chance now to read the briefs and the</p> <p>10 materials. Keep that in mind in presenting your</p> <p>11 arguments.</p> <p>12 You may begin.</p> <p>13 MR. BROOKER: Your Honor, I think</p> <p>14 that the issue here comes down to burden. I think</p> <p>15 that the Defendants have basically conceded the</p> <p>16 other issues here; relevance, because the cases</p> <p>17 are the same; the affirmative defenses are the</p> <p>18 same; the fact that they have possession, custody</p> <p>19 or control, because they've been served these</p> <p>20 documents. And they've abandoned their other</p> <p>21 objections on privilege and the sealing order.</p> <p>22 So it comes down to burden.</p> <p>23 And in this case, the burden that they're</p> <p>24 complaining about is not about finding the</p>	<p style="text-align: right;">Page 7</p> <p>1 documents, reviewing them or producing them. That</p> <p>2 they're willing to do. It's all about their</p> <p>3 burden under the MDL's protective order.</p> <p>4 Now, this is a stipulated</p> <p>5 protective order. They've already agreed to meet</p> <p>6 the burdens and their obligations under that</p> <p>7 order. And all it actually makes them do is send</p> <p>8 a single email. They can send it to -- one email</p> <p>9 to 30 parties, the 30 nonparties here, explaining</p> <p>10 that -- just as they concede actually in their</p> <p>11 brief, they could simply notify all 30 MDL third</p> <p>12 parties that some of their confidential documents</p> <p>13 could be produced as part of our document request.</p> <p>14 Now, they complain about the</p> <p>15 fact they might have to -- they say that they have</p> <p>16 to identify the specific confidential references</p> <p>17 in those documents for these third parties, and in</p> <p>18 fact they don't have to. The MDL protective order</p> <p>19 does not require them to do that. And they</p> <p>20 wouldn't need to do that -- the third parties</p> <p>21 don't need to do that either. These nonparties</p> <p>22 won't because their confidentiality obligations</p> <p>23 will be preserved here because this Court, in its</p> <p>24 protective order, which is modeled after the MDL</p>
<p style="text-align: right;">Page 8</p> <p>1 protective order, preserves those</p> <p>2 confidentiality. It's simply that what the MDL</p> <p>3 protective order anticipates is that they would</p> <p>4 come here and assert their confidentiality</p> <p>5 obligations for a protective order to protect that</p> <p>6 confidentiality.</p> <p>7 THE COURT: Well, how would they do</p> <p>8 that if they didn't review them and figure out</p> <p>9 what it was that was being disclosed?</p> <p>10 MR. BROOKER: They have already</p> <p>11 disclosed this and asserted their confidentiality</p> <p>12 in the MDL. So these are documents and</p> <p>13 information that already have stamped</p> <p>14 "confidential" or "highly confidential"</p> <p>15 designations that these nonparties have asserted</p> <p>16 in the MDL.</p> <p>17 The question is, is it -- do</p> <p>18 they -- when those documents are produced to us,</p> <p>19 what happens to the confidentiality obligations?</p> <p>20 This Court anticipated that possibility in its --</p> <p>21 in the protective order in this case, and it</p> <p>22 preserves those confidentiality designations that</p> <p>23 they made over there here. So all -- they don't</p> <p>24 have to even come in this court, and they're</p>	<p style="text-align: right;">Page 9</p> <p>1 already automatically protected.</p> <p>2 In fact, the Defendants have</p> <p>3 recognized this. They've produced other</p> <p>4 documents. They produced MDL depositions of these</p> <p>5 third parties where they asserted confidentiality.</p> <p>6 They produced expert reports from the MDL that</p> <p>7 include documents and information from these third</p> <p>8 parties and have designated the information</p> <p>9 confidential. We've received this stuff already.</p> <p>10 They've given the notice in other situations in</p> <p>11 the previous cases. And the confidentiality is</p> <p>12 recognized by the Defendants, has been</p> <p>13 automatically preserved by this Court's protective</p> <p>14 order. So they don't even have to come in and do</p> <p>15 anything.</p> <p>16 Now, just to give you a little</p> <p>17 bit of history that you won't know about, two of</p> <p>18 these nonparties objected initially to the</p> <p>19 production of the expert reports in the</p> <p>20 depositions from the MDL. They were concerned</p> <p>21 about their confidentiality. When we showed them</p> <p>22 in this Court's protective order that in fact</p> <p>23 their confidentiality is preserved, they withdrew</p> <p>24 their obligations in both the MDL depositions and</p>

<p style="text-align: right;">Page 10</p> <p>1 the expert reports that have these nonparties'</p> <p>2 confidential information. There's just not going</p> <p>3 to be any intervention necessary because this</p> <p>4 Court's already anticipated it.</p> <p>5 THE COURT: Well, tell me why you</p> <p>6 need every single document filed under seal.</p> <p>7 MR. BROOKER: These are the documents</p> <p>8 that go most directly to the facts that were at</p> <p>9 issue in that case. The information that's --</p> <p>10 THE COURT: Well, when you say</p> <p>11 "these", that's where you kind of -- I'm kind of</p> <p>12 holding up because my understanding is you want</p> <p>13 everything that was filed, all these briefs that</p> <p>14 were filed under seal. All of them. And there</p> <p>15 was some discussion in the papers that you don't</p> <p>16 want to identify which ones are the most germane</p> <p>17 to the State's case. You want all of them. And</p> <p>18 so that's the issue, why you need all of them.</p> <p>19 MR. BROOKER: To answer that, your</p> <p>20 Honor, we have to take a couple things, a step</p> <p>21 back. Now, remember what we're asking for is the</p> <p>22 information that's been designated confidential.</p> <p>23 So these aren't -- so the type filing that we're</p> <p>24 asking for, the ones that are filed under seal,</p>	<p style="text-align: right;">Page 11</p> <p>1 have facts involved, and confidential facts.</p> <p>2 THE COURT: And how many of them are</p> <p>3 there? My understanding is there were</p> <p>4 400-and-some.</p> <p>5 MR. CROSS: 4,000.</p> <p>6 MR. BROOKER: No. That's --</p> <p>7 THE COURT: No. The designations.</p> <p>8 But the number of briefs -- the number of</p> <p>9 documents that you're looking for.</p> <p>10 MR. CROSS: 4,187.</p> <p>11 THE COURT: I see.</p> <p>12 MR. BROOKER: The total number of MDL</p> <p>13 filings is about 4,500 -- is it? --- probably</p> <p>14 approaching 5,000 now. And many of them have</p> <p>15 certain parts of them that are confidential, and</p> <p>16 these are the good factual parts, the parts that</p> <p>17 have the confidential information. Somebody's</p> <p>18 designated them as confidential because that's</p> <p>19 where the juicy facts are. These are not</p> <p>20 run-of-the-mill motions up for pro hoc vice.</p> <p>21 These are substantive motions, where facts are at</p> <p>22 issue that were being asserted.</p> <p>23 And because these cases are so</p> <p>24 similar -- the price fixing is on CRTs, involve</p>
<p style="text-align: right;">Page 12</p> <p>1 the same Defendants, during the same time</p> <p>2 period -- and because the affirmative defenses the</p> <p>3 Defendants assert here all mimic the affirmative</p> <p>4 defenses that they assert there, there's --</p> <p>5 there's nothing substantive.</p> <p>6 THE COURT: If that's all true, why</p> <p>7 didn't you just stay in the MDL?</p> <p>8 MR. BROOKER: The MDL Court doesn't</p> <p>9 have jurisdiction to hear this case because we're</p> <p>10 bringing it under the Illinois Antitrust Act.</p> <p>11 They don't have jurisdiction. So we can't be up</p> <p>12 there. There's obviously logistical reasons why</p> <p>13 we do not want to be up there, but the fact of the</p> <p>14 matter is we can't be.</p> <p>15 So when you look at the rule</p> <p>16 that's in place here, under Rule 201, you balance</p> <p>17 the benefit and the burden. And I've talked a</p> <p>18 little bit now about the benefit. This is going</p> <p>19 to get us the facts that are important quickly and</p> <p>20 efficiently. It's going to keep us from having to</p> <p>21 go after -- sending all sorts of third</p> <p>22 party/nonparty subpoenas to get that information,</p> <p>23 and then to try to digest it in a way -- this is</p> <p>24 going to be a fast, easy way to do that. So</p>	<p style="text-align: right;">Page 13</p> <p>1 that's the benefit. So it's going to benefit us;</p> <p>2 it's going to benefit the Defendants; it's going</p> <p>3 to benefit third parties; and ultimately this</p> <p>4 Court.</p> <p>5 The burden here is really,</p> <p>6 really small. Copying these documents is</p> <p>7 minisculely small. It's easy to do. They're</p> <p>8 willing to do it. There's no real burden here.</p> <p>9 Now, the Defendants in their</p> <p>10 brief, they refer to one of the cases that we</p> <p>11 cited, which is Apple versus Samsung. And what</p> <p>12 the Court did there is it said, "Look. We're</p> <p>13 going to have a presumption." Now, that was a</p> <p>14 complicated patent dispute. They said -- and the</p> <p>15 parties asked for these types of documents, other</p> <p>16 documents related to that litigation. And they</p> <p>17 said -- the judge said, "Look. Where the patents</p> <p>18 are really, really similar, we're going to assume</p> <p>19 that there's a technological nexus" is the</p> <p>20 word that they -- the term that they use. "And</p> <p>21 where these patents are really similar, that they</p> <p>22 have a technological nexus, we're going to presume</p> <p>23 that all the documents in these related</p> <p>24 litigations are relevant. That is, you know, you</p>

<p style="text-align: right;">Page 14</p> <p>1 can go and get all of them." You're talking about 2 filings, you're talking about discovery responses, 3 expert reports, so on and so forth.</p> <p>4 Now, if you were to apply that 5 presumption here, it's an easy and obvious case.</p> <p>6 THE COURT: Why would I do that?</p> <p>7 MR. BROOKER: Well, there was a 8 shorthand that the judge was using, trying to 9 distinguish which cases were so important that -- 10 which cases were of such a nature that they were 11 so similar that the information available in that 12 other case is going to be germane; that is, 13 relevant and discoverable and might lead to 14 discoverable evidence. And so you don't have to 15 adopt that presumption, but it sets a good path on 16 how to go forward in this situation.</p> <p>17 Now, we can't come forward, 18 and this is part of our difficulty, to 19 specifically say that particular document and that 20 particular document we want the unsealed, 21 unredacted version of because we can't see what 22 the underlying information is.</p> <p>23 THE COURT: Well, you've got 24 everything. You've got everything in redacted</p>	<p style="text-align: right;">Page 15</p> <p>1 form. So you could choose which ones seemed to be 2 in the ballpark of what you're looking for; in 3 other words, discoverable or could lead to 4 discoverable information. Because one alternative 5 to your argument -- and this leads to this 6 presumption notion -- another alternative way of 7 looking at it is you would like to fish in to this 8 big pool, to pull out whatever you think you need, 9 without identifying what that is beforehand. And 10 so in a sense, that kind of turns the table on the 11 proponent of discovery.</p> <p>12 You want everything in an 13 enormous case that has issues involved in it that 14 apparently, some of which might have overlapped 15 with Illinois, but some of which don't. But you 16 don't want to identify from that pool of documents 17 which ones or categories thereof are the relevant 18 ones. You want to -- you want access to 19 everything so that you can sift through that and 20 determine which of these facts are important to 21 your case. That is changing the -- turning the 22 tables, in my view, on what normally normal 23 discovery would be about.</p> <p>24 MR. BROOKER: Well, here's the</p>
<p style="text-align: right;">Page 16</p> <p>1 difference, though. Because we have -- we have 2 not asked for the entire MDL files. We've not 3 asked for that. We've limited it to the sealed 4 filings. Now, in the MDL, I will admit that there 5 are certain motions, pro hoc vice motions --</p> <p>6 THE COURT: I'm going to stop you 7 there because let's just talk about the pool 8 that's at issue here. And I'm going to pick up on 9 where we left off before I interrupted your 10 argument.</p> <p>11 You have the redacted briefs. 12 So you know what the subject matter is that 13 surrounds the redacted portions. Why can't you 14 take a look at those and decide which ones are 15 relevant or may lead to discovery of relevant 16 information from the documents that are public 17 record and available to you?</p> <p>18 MR. BROOKER: Your Honor, we actually 19 tried that once in another case, and it didn't 20 work. What happened is we went through them, one 21 by one by one. Every document, every docket entry 22 in an MDL in another case. We went through them, 23 and we tried to pick them out. And the truth is 24 that we could not identify all of them. We were</p>	<p style="text-align: right;">Page 17</p> <p>1 trying to be selective, but we could not do it. 2 What happened in the end was we did not have stuff 3 that we needed, and we had stuff that we didn't 4 need. It was just not an effective way to do 5 this. The only way we can know ahead of time that 6 we have all of the relevant material is to get all 7 of it. And then we're safe.</p> <p>8 Now, quite frankly, it's 9 easier to produce, from their perspective, 10 everything and just -- and not have somebody 11 review it or pick out one by one, just take them 12 all and produce them all, than to have everyone to 13 go through line by line because I will tell you 14 that it took many, many hours for us to go through 15 one by one by one by one, and the fact that the 16 Defendants have done to some extent that already 17 to identify them, they have made it clear that 18 that was a burden in itself. But the fact is that 19 even after that, when we did that in the other 20 case, it just wasn't effective. So we didn't get 21 what we needed, and we got stuff we didn't need 22 because so we can't see what's underneath. We had 23 a good sense. It just ended up not being 24 complete. And then what happens is we have to</p>

<p style="text-align: right;">Page 18</p> <p>1 find other alternatives and more supplemental 2 productions and potentially have delays in the 3 case later when we find out we need something and 4 we don't have it.</p> <p>5 This is an easy way to get us 6 all of the information because the standard isn't 7 that we have to know if it's relevant ahead of 8 time. The standard is if it's likely to lead to 9 admissible evidence. And fact of the matter here 10 is that if it's designated confidential, that 11 means we're talking about facts that are from 12 parties.</p> <p>13 Now, the issues are so close; 14 and they haven't been able to identify a single 15 entry, docket entry where the document has 16 something that's totally irrelevant to the -- to 17 this case. They haven't identified one.</p> <p>18 The one that they picked out 19 is the one that we picked out. It had to do with 20 the Foreign Trade Antitrust Improvements Act, 21 which involves some factual inquiries. And in 22 that case -- this is the only one they picked out. 23 In that case, the factual issue is whether their 24 price fixing had an impact on the domestic market,</p>	<p style="text-align: right;">Page 19</p> <p>1 which is -- and it's the same test, whether you're 2 in Illinois or California. So because that test 3 is the same and the facts are the same, all of 4 that information, all of the facts that are in 5 those pleadings, are germane to this case as much 6 as they are to the MDL.</p> <p>7 So without any indication that 8 some of them are not relevant, it makes it easier, 9 both in terms of expediency and efficiency, just 10 to produce all of them so we don't have this 11 problem down the road.</p> <p>12 THE COURT: Okay.</p> <p>13 MR. CROSS: First off, your Honor, 14 let me start off by saying there is no list of 15 third -- the so-called list of 30 third parties. 16 There is no list. We'd have to go through all the 17 documents to determine who we're talking about 18 just to give notice.</p> <p>19 And in point of fact, 20 Mr. Brooker attaches to his brief, his reply 21 brief, two letters, one that came from White and 22 Case producing a number of third party depositions 23 and documents, and another that came from Sheppard 24 Mullin producing expert depositions, one of which</p>
<p style="text-align: right;">Page 20</p> <p>1 is Dr. Janet Netz, who is the expert for the other 2 22 states that had indirect purchasers.</p> <p>3 By the way, White and Case and 4 Sheppard Mullin had to go through those documents 5 in order to give notice. And in the case of the 6 Netz expert deposition, they gave notice to the 7 third parties who were involved. And one of 8 them -- actually, two of them, but Funai -- both 9 of them objected, but Funai proceeded to negotiate 10 with the State for six months before Funai was 11 convinced.</p> <p>12 Now, they say -- Mr. Brooker 13 says that you've already in your protective order 14 given confidentiality protection to these third 15 parties. Well, you know, it's not for this Court 16 or for Mr. Brooker to decide that these third 17 parties are adequately protected. It's for these 18 third parties to have the choice to decide, do 19 they want to subject their confidential 20 information to this Court's protection or not. 21 Ultimately, after six months of negotiation, the 22 State was able to do that.</p> <p>23 Your Honor, look. This is 24 just another instance of when the State just</p>	<p style="text-align: right;">Page 21</p> <p>1 doesn't want to do the work necessary to prosecute 2 this case. And the proof is right in their brief. 3 Page 2 of their brief states that the filings, 4 talking about this pool of third party, "The 5 filings organize voluminous deposition transcripts 6 and documents that, if provided the State, will 7 reduce the expense and time of discovery." 8 Organize. So what they're trying to do is find 9 out -- somebody else has decided what's important 10 or not, and they want to be able to zero in on 11 that.</p> <p>12 Let's be perfectly clear as to 13 what is the pool. First off, the Defendants in 14 this case have produced 4.9 million documents. 15 They've produced every one of their depositions. 16 They've produced all their expert reports. 17 They've produced the third party depositions in 18 the DAP case, the so-called direct action 19 plaintiffs, people like Dell. I mean, Dell has 20 opted out, but Dell is an example. The -- I can't 21 remember all the initials, the IPPs, and the DPAs, 22 you know, all of those third party depositions, 23 which required a significant amount of work to 24 provide notice. So the State has an enormous</p>

<p style="text-align: right;">Page 22</p> <p>1 amount of material.</p> <p>2 Now, if we were to try to use</p> <p>3 something that was under "confidential", and of</p> <p>4 course we'd have to come in to the Court,</p> <p>5 obviously the Plaintiff would get access to that.</p> <p>6 I mean, we're not about to sandbag them. You</p> <p>7 know, they'd get access to it. So they don't have</p> <p>8 to worry in that regard.</p> <p>9 Now, Mr. Brooker says that the</p> <p>10 issues are the same. Well, they're not the same,</p> <p>11 your Honor. There are a lot of different issues.</p> <p>12 First off, there are 22 states that -- 22 states</p> <p>13 where there are so-called opt out -- I'm sorry --</p> <p>14 so-called indirect purchasers, like the end users</p> <p>15 here or the distributors who have filed suit and</p> <p>16 have been consolidated in California. So to the</p> <p>17 extent that issues regarding those 22 states,</p> <p>18 yeah, maybe the Foreign Antitrust Trade</p> <p>19 Improvements Act, Antitrust Trade -- Foreign Trade</p> <p>20 Antitrust Improvements Act, the FTAIA, might be --</p> <p>21 might be relevant; but they could certainly --</p> <p>22 they were able to pick that one out. They can</p> <p>23 certainly pick them out from the 2,187 briefs that</p> <p>24 were filed under seal.</p>	<p style="text-align: right;">Page 23</p> <p>1 First off, we're going to have</p> <p>2 to do a significant amount of work to figure out</p> <p>3 who the third parties are to give them notice.</p> <p>4 THE COURT: I want to go back to that</p> <p>5 because I'm a little unclear. So in other words,</p> <p>6 these third parties that you're calling are the</p> <p>7 suppliers of the information that could have a</p> <p>8 claim that the information is confidential?</p> <p>9 MR. CROSS: Correct.</p> <p>10 THE COURT: And so where the argument</p> <p>11 in the State's brief is that this is simply</p> <p>12 sending out a blanket notice, one email to</p> <p>13 multiple parties, your argument is you don't know</p> <p>14 who that email would go to without an additional</p> <p>15 effort to determine who would be on that list?</p> <p>16 MR. CROSS: Correct. We know many of</p> <p>17 them. As I -- for example, as I said in the</p> <p>18 letter that's attached to his brief, White and</p> <p>19 Case produced a number of third party depositions,</p> <p>20 like Sears. It was a third party. We know we had</p> <p>21 to give notice to Sears. But we don't know all of</p> <p>22 them. So what we'd have to do is we'd have to</p> <p>23 look at all 2,284 briefs and exhibits filed under</p> <p>24 seal. We're estimating that there's some 41,000</p>
<p style="text-align: right;">Page 24</p> <p>1 entries. We'd have to look at all those and</p> <p>2 figure out who that entry came -- and remember.</p> <p>3 Not all these briefs are briefs that the</p> <p>4 Defendants wrote. By the way, the Defendants</p> <p>5 aren't all the same in the MDL case and in this</p> <p>6 case, and certainly the Plaintiffs are not all the</p> <p>7 same. So we'd to have look at all 41,000 or so</p> <p>8 entries, figure out who it is. We know many of</p> <p>9 them, but we don't know them.</p> <p>10 If we made a mistake and</p> <p>11 turned it over, we would have violated the</p> <p>12 protective order in MDL. You know, Mr. Brooker</p> <p>13 talks about the MDL Court being irked if they have</p> <p>14 to go file another motion to intervene in order to</p> <p>15 come within the protective order. I think the MDL</p> <p>16 Court would be very irked if we violated the</p> <p>17 protective order or you ordered us to turn over</p> <p>18 documents without protections here.</p> <p>19 And it does boil down to the</p> <p>20 fairness of their not wanting to do the work.</p> <p>21 Take a shot in this case at trying to figure it</p> <p>22 out. Let's say he takes the 2,284 documents filed</p> <p>23 under seal and narrows it down to 1,000. We're</p> <p>24 going to still have to do an enormous amount of</p>	<p style="text-align: right;">Page 25</p> <p>1 work, but that's less than looking at -- less than</p> <p>2 looking at all of them.</p> <p>3 Recently, by the way -- so</p> <p>4 there are three or four other state actions like</p> <p>5 this one. There's one in the state of Washington,</p> <p>6 which I know you're familiar with because we</p> <p>7 provided briefs to you in that case. And there's</p> <p>8 one in the state of Oregon. And in the state of</p> <p>9 Oregon case, recently the attorney general of</p> <p>10 Oregon agreed to undertake the work that was</p> <p>11 necessary in order to reduce the number of sealed</p> <p>12 briefs in the MDL case. And they are, I</p> <p>13 understand, in the process of doing that?</p> <p>14 MS. KIM: That's correct, your Honor.</p> <p>15 MR. CROSS: They're in the process of</p> <p>16 doing that. And then once they do that, we</p> <p>17 will -- Ms. Kim negotiated the deal with the</p> <p>18 Attorney General. If you have any questions, she</p> <p>19 can respond to that. But they stepped up to the</p> <p>20 plate and did the work.</p> <p>21 Let me just check my notes. I</p> <p>22 think I covered everything I wanted to. I think</p> <p>23 that's it.</p> <p>24 THE COURT: Thank you. Anyone else</p>

<p style="text-align: right;">Page 26</p> <p>1 have anything? Any other Defendant?</p> <p>2 Hold on one second. You'll</p> <p>3 get a chance to reply. I just want to make sure</p> <p>4 that we've got everyone covered who might wish to</p> <p>5 inform me of something. Anyone?</p> <p>6 MS. KIM: Your Honor, Miriam Kim for</p> <p>7 the LG Defendants. I would like to just add a</p> <p>8 couple of points. I am counsel for LG Electronics</p> <p>9 and LG USA in the Oregon action that Mr. Cross</p> <p>10 mentioned, and I did personally negotiate with the</p> <p>11 Attorney General's office there. And they</p> <p>12 reviewed the docket in the MDL, and they</p> <p>13 identified the documents that they wanted the</p> <p>14 Defendants there to produce. And we have -- we</p> <p>15 have agreed to do that. We are in the process of</p> <p>16 reviewing those filings and making that</p> <p>17 production.</p> <p>18 I also want to elaborate on</p> <p>19 the burden because the State significantly</p> <p>20 underestimates the burden of what is involved</p> <p>21 here. I have personally had to review documents</p> <p>22 to determine which third parties needed to be</p> <p>23 notified. We recently produced backup material</p> <p>24 for expert witnesses. I personally had to review</p>	<p style="text-align: right;">Page 27</p> <p>1 every single file in certain experts' backup</p> <p>2 production because there are some experts, as you</p> <p>3 can imagine, who, you know, produced third party</p> <p>4 materials that -- given that this case has been</p> <p>5 going on for decades, and there have been</p> <p>6 different lawyers who have handled the matter,</p> <p>7 it's true. We don't have a single list because</p> <p>8 some parties are getting third party documents</p> <p>9 from other related litigation that my client is no</p> <p>10 longer involved in or my client has settled out of</p> <p>11 the IPP case. My client has settled out of the</p> <p>12 DPP case. Those cases are still pending in the</p> <p>13 MDL, so there may be another party in the MDL that</p> <p>14 has obtained third party documents in that case</p> <p>15 that my client would not know about. And so I</p> <p>16 personally had to review every single file in the</p> <p>17 backup production, see which third party produced</p> <p>18 them, and then cross reference that with the list</p> <p>19 to determine if that third party had been given</p> <p>20 sufficient notice to cover that material and, if</p> <p>21 not, to make sure that we address that.</p> <p>22 That is the process that would</p> <p>23 be involved. It is not a single email. It is not</p> <p>24 a simple process. Under the MDL protective order,</p>
<p style="text-align: right;">Page 28</p> <p>1 we take our obligations seriously; and we do not</p> <p>2 have a single list where we can send a single</p> <p>3 email.</p> <p>4 The other point I would like</p> <p>5 to make is that the Defendants have not conceded</p> <p>6 relevance. That is completely not the case. As</p> <p>7 your Honor said, they are trying to turn the</p> <p>8 tables here. The burden is on the State to show</p> <p>9 what is the relevance of this material. The fact</p> <p>10 is, it's not the Defendants' burden to point out</p> <p>11 all of the relevant filings. It's the State's</p> <p>12 burden to show what is the likely benefit here and</p> <p>13 why does that outweigh the burden. And they</p> <p>14 simply have not shown that. And I think the fact</p> <p>15 that the Oregon AG has recognized that, and they</p> <p>16 have recognized themselves that in another case,</p> <p>17 they were able to do that. And while it may not</p> <p>18 have been as effective as the State would like,</p> <p>19 that is their burden; and we submit that is what</p> <p>20 should be done here.</p> <p>21 THE COURT: Thank you.</p> <p>22 MR. BROOKER: Your Honor?</p> <p>23 THE COURT: Yes, go ahead.</p> <p>24 MR. BROOKER: I think counsel for the</p>	<p style="text-align: right;">Page 29</p> <p>1 Defendants has grossly overstated the burden that</p> <p>2 they actually have. If you go to the MDL docket,</p> <p>3 you can identify all of the parties who are there</p> <p>4 that are not here. You put them on the list.</p> <p>5 Each of the Defendants are involved in a number of</p> <p>6 different MDL cases. Some have settled, so</p> <p>7 they're not all getting the third party subpoenas.</p> <p>8 So if each Defendant identifies who they received</p> <p>9 materials from, from third parties, and they</p> <p>10 consolidate that list, they have their list in</p> <p>11 order to distribute. And it's really that easy.</p> <p>12 There's absolutely no reason</p> <p>13 to go through all of the different references in</p> <p>14 every single document that's filed under seal to</p> <p>15 identify for them because it's just not necessary.</p> <p>16 When they get the notice, when these Defendants</p> <p>17 get these -- the nonparties get the notice, and</p> <p>18 they realize, because -- while serving with that,</p> <p>19 they can also provide the protective order in this</p> <p>20 case. They'll realize that their information is</p> <p>21 already protected. It's exactly what happened in</p> <p>22 the last two times I went through when somebody</p> <p>23 had an objection.</p> <p>24 And I'm going to let</p>

<p style="text-align: right;">Page 30</p> <p>1 Mr. Harrop discuss that because he was personally 2 involved in those negotiations with Funai that 3 supposedly --</p> <p>4 THE COURT: I don't really need to 5 hear about another case. I have enough on my 6 plate with this one.</p> <p>7 MR. BROOKER: That's this case.</p> <p>8 MR. HARROP: It is this case. The 9 reason we did not get discovery for six months in 10 this case was because of the Funai situation. The 11 Funai situation existed because we received email 12 from one of the defense counsel saying that Funai 13 had objected. I responded to that email within 24 14 hours and asked them to have Funai contact me if 15 there was a continuing concern. I heard nothing 16 more about the issue for three months.</p> <p>17 At the end of three months, we 18 were told again we could not get the material 19 because Funai was objecting. I again responded 20 and said, "Please have Funai contact me."</p> <p>21 A month went by. I asked 22 again if they would please have Funai contact me. 23 There was no response from defense. 24 I then went to the docket,</p>	<p style="text-align: right;">Page 31</p> <p>1 found Funai's counsel, emailed them directly, and 2 told them that we would be happy to discuss the 3 issue. I was told I had emailed the wrong Funai 4 counsel because they're not the ones who objected. 5 I was then put in contact with the right Funai 6 counsel, eating up another three weeks.</p> <p>7 I then started an email 8 conversation with Funai's counsel and said, 9 "What's the problem?"</p> <p>10 They said, "We'll we need a 11 protective order in place in Illinois before we 12 can agree to the material here."</p> <p>13 I said, "We already have such 14 a protective order." I emailed him a copy, having 15 assumed the Defendants had already done that -- 16 apparently not.</p> <p>17 He looked at the protective 18 order and said there was no issue. That's the six 19 months of negotiations that we went through.</p> <p>20 So there's not a major issue 21 with these third parties being concerned about the 22 outside. If the protective order is given to them 23 that's here in Illinois, they seem to have no 24 problem.</p>
<p style="text-align: right;">Page 32</p> <p>1 MR. CROSS: It's pretty presumptuous, 2 your Honor, that he can make that claim on behalf 3 of some 30 third parties who haven't had a chance 4 to think about whether they want to be subjected 5 to this Court's protective order, which means that 6 if Mr. Harrop and Mr. Brooker want to use the 7 document in a brief, and if you also look at their 8 brief, that's not -- just their having the 9 document is not the issue. The issue ultimately 10 is they want to use it. They then have to give 11 notice that they want to use it in a brief, which 12 could be filed under seal or not filed under seal; 13 and the third party gets an opportunity to come in 14 here to intervene and say, "No, I don't want it in 15 the public record. I want it filed under seal." 16 It's the third party's choice.</p> <p>17 I'd also like to make a key 18 point that apparently Mr. Brooker wasn't listening 19 to myself or Ms. Kim. Not all the Defendants are 20 the same in the MDL case and in this case. 21 Therefore, there are some Defendants out there 22 that may have received third party documents and 23 put them in a brief that we don't know who those 24 people are because they didn't -- they weren't</p>	<p style="text-align: right;">Page 33</p> <p>1 third parties that we subpoenaed or received 2 documents and put them in a brief. So we'd still 3 have to go through the 2,284 briefs to figure out 4 who these third parties are because we don't know 5 all of them, because the Defendants aren't the 6 same.</p> <p>7 MR. SIMON: And I would add, your 8 Honor, these third parties may not have ever 9 appeared in the MDL; for example, they were simply 10 subpoena recipients who produced documents under 11 the protective order. Their names would not be 12 anywhere in the MDL docket at all.</p> <p>13 THE COURT: Thank you. Anything 14 further? Because it's your motion. You get the 15 last word.</p> <p>16 MR. BROOKER: Your Honor, the reason 17 that there's no concern here about a breach of 18 confidentiality is that this Court's stipulated 19 protective order already protects all of the 20 nonparties' confidential information.</p> <p>21 Now, what Defendants' counsel 22 has suggested is that they get a choice about 23 whether that information ends up in this case or 24 not. That's actually not true. If the</p>

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1 information is within the Defendants, we have a
2 right to get it because it's in their possession
3 now. The question is not whether it's in this
4 Court in some way. What the question is is
5 whether the confidential information becomes part
6 of the public record in this case.

7 Now, under this Court's
8 protective order, which gives exactly the same
9 protections as the MDL protective order, because
10 if you'll recall, we had a long fight over it.
11 The Defendants won. You adopted the MDL's version
12 of the protective order with very, very few minor
13 modifications. The same protections that they get
14 in the MDL they get here.

15 If we want to put some of
16 their information on the public record, which is
17 the only concern they could possibly have, we
18 would have to give notice under the stipulated
19 protective order in this case specifically to them
20 to challenge their confidentiality designation.
21 Our alternative is to file it under seal. Those
22 are the two options that we have: challenge the
23 designations and bring them into court or at least
24 give them opportunity to object or file them under

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1 the -- a voluminous litigation, with multiple
2 parties, and multiple third parties, recognizes
3 that tracing back -- even the Court has this issue
4 when it's required to sort through multiple briefs
5 to figure out which documents are redacted and
6 which information has been filed under seal and
7 which hasn't.

8 In this case, the difficulty
9 seems to be not only with the number of documents
10 that are involved, but the fact that the
11 information comes from either Defendants here,
12 Defendants who are not Defendants here, or third
13 parties, and that while the State's brief and
14 argument suggests that this is a simple process of
15 simply sending out an email, I find that
16 proposition dubious. And the representations of
17 counsel today are that my instincts were correct
18 on that; that this is a laborious job, trying to
19 determine exactly whose information is involved
20 and who must be notified.

21 I do not buy the argument that
22 there are coterminous protective orders in the MDL
23 and here and that that takes care of everything
24 because that decision is not my decision to make,

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1 seal. And that's for down the road.

2 If their only interest here is
3 protecting confidentiality, this Court's already
4 given it to them. They're not going to show up,
5 which is why you don't need to go through the
6 record. If there's information that needs to be
7 disclosed or notice that needs to be given for
8 them to come into the Court, we will provide that
9 after we have the documents. But that's a fight
10 down the road. This Court has already given them
11 any protection that they might need.

12 THE COURT: All right. Well, I'm
13 prepared to rule on this; and I'm going to deny
14 the motion. I have a number of reasons for this.

15 One is, I think this is a
16 question of fairness; and, of course, that always
17 involves certain balancing and factoring in a
18 number of concerns.

19 I think that the State's
20 position here underestimates the burden that's
21 involved in producing materials that are included
22 in basically every redacted brief that's been
23 filed in the MDL, which we learned is nearly 2,200
24 documents. Anyone who's ever had to deal with

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1 and it's not the Plaintiff's decision to make. It
2 is the third party or Defendant who's providing
3 confidential information, at least to make a
4 determination as to whether that party wishes to
5 come into court and not permit the disclosure.

6 So it's important that the MDL
7 Court's protective order is complied with, whether
8 or not there will be consequences from it, just as
9 it's important that this Court's protective order
10 will be complied with, whether or not there are
11 consequences from it or whether or not some third
12 party wishes to object. But it's always the third
13 party's option, and that means the third party has
14 to be notified.

15 So what we hear on
16 representations of various Defendants is that this
17 is a somewhat complicated enterprise. And
18 honestly, Mr. Harrop's experience simply
19 reinforces my view that the experience he had is
20 exactly the experience that the Defendants
21 involved here are going to have when they try to
22 figure out who it is that needs to be contacted to
23 produce this third party information. That is,
24 there could be multiple counsel. There could be

<p style="text-align: right;">Page 38</p> <p>1 multiple counsels in succession, as well as 2 simultaneously. These are multinational 3 corporations. 4 And so I think the burdens are 5 far, far outweighed on the Defendants' side than 6 the Plaintiff's, who simply want the easiest, 7 simplest way to get everything whether, frankly, 8 as far as I can see, it actually fits their case 9 or not. I do think that's turning the tables on 10 the rules of discovery. 11 I'm not convinced. I haven't 12 been provided any, say, raw materials to show me 13 that the issues are the exact same issues. In 14 fact, when I asked, "Why didn't you join the MDL," 15 it's because certain issues will be coming under 16 Illinois law. So that suggests to me that there 17 may be some fertile ground here in this large pool 18 of disclosures in the MDL, but not necessarily 19 coterminous. And as we know in Illinois, we don't 20 allow fishing expeditions in discovery. 21 So I think overall the burden 22 is decidedly in favor of the Defendants without, 23 in my view, a showing that there is such a 24 necessity to warrant this burden being extended on</p>	<p style="text-align: right;">Page 39</p> <p>1 this wholesale request for every document that's 2 under seal in the MDL. 3 So the motion is denied. 4 MR. CROSS: Thank you, your Honor. 5 MR. BROOKER: Thank you. 6 THE COURT: Do we have another court 7 date coming up? 8 MR. CROSS: Yes, your Honor. I think 9 it's at the end of the year. We have a scheduling 10 order that's been entered. 11 THE COURT: All right. Well, then I 12 may see you before then. 13 MR. CROSS: I think you will, your 14 Honor. 15 THE COURT: Thank you. 16 17 (Which were all the proceedings had.) 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 40</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF C O O K) 4 5 I, KATHY ANNE SEFTON, being first duly 6 sworn on oath, say that I am a court reporter 7 doing business in the City of Chicago; that I 8 reported in shorthand the proceedings given at the 9 taking of said court proceedings, and that the 10 foregoing is a true and correct transcript of my 11 shorthand notes so taken as aforesaid, and 12 contains all the proceedings given at said court 13 proceedings. 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;"><i>Kathy A. Sefton</i></p> <p style="text-align: center;">KATHY ANNE SEFTON, C.S.R. 79 West Monroe Street Suite 923 Chicago, IL 60603 Phone: (312) 578-8901 ksefton@seftonmoran.com www.seftonmoranreporting.com</p>	

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